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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Sandra Jauregui,

10 Plaintiff,

11 v.

12 Daimler Truck North America LLC, *et al.*,

13 Defendants.  
14

No. CV-23-00729-PHX-JJT

**ORDER**

15 At issue is Defendant PACCAR Incorporated's (Paccar) motion to exclude the  
16 testimony of Dr. David Orlowski (Doc. 136, Motion), to which Defendant Bendix  
17 Commercial Vehicle Systems LLC (Bendix) filed a notice of joinder (Doc. 148), Plaintiff  
18 Sandra Jauregui filed a response (Doc. 161, Response), and Paccar filed a reply (Doc. 172,  
19 Reply). The Court finds this matter appropriate for resolution without oral argument. *See*  
20 LRCiv 7.2(f). For the reasons set forth below, the Court grants Paccar's motion in part and  
21 denies it in part.

22 **I. Brief Factual Background**

23 This case arises out of a tragic highway collision in which Plaintiff's late husband,  
24 Mr. Jauregui, drove a big-rig truck into another big-rig truck that had stalled and come to  
25 a complete standstill on the Interstate 17. Mr. Jauregui, who perished in the accident, was  
26 driving a 2022 Peterbilt Conventional 579 tractor-trailer manufactured by Paccar.  
27 Mr. Jauregui's truck was equipped with a product manufactured by Bendix known as the  
28 Wingman Fusion, which is an Advanced Driver Assistance System designed to assist

1 drivers with the avoidance of roadway hazards, including stationary objects present in  
 2 traffic lanes. Plaintiff asserts that a defect in Bendix's collision avoidance system, and/or a  
 3 defect in the Peterbilt truck's integration of Bendix's technology, proximately caused the  
 4 collision that killed Mr. Jauregui.

5 Plaintiff is Mr. Jauregui's widow, and she has brought suit against Defendants on  
 6 behalf of herself and Mr. Jauregui's other statutory beneficiaries. Plaintiff retained  
 7 Dr. David Orłowski to furnish expert testimony regarding the economic damages incurred  
 8 by Mr. Jauregui's family as a result of his premature passing. Dr. Orłowski has provided  
 9 monetary valuations of Plaintiff's damages relating to (1) loss of earning capacity, (2) loss  
 10 of social security benefits, and (3) loss of household services. (Doc. 136-1 at 18.)  
 11 Dr. Orłowski also described a fourth category of economic damages known as "loss of  
 12 companionship," but he did not arrive at a numerical valuation thereof. (Doc. 136-1  
 13 at 16–18.) Defendants argue that various portions of Dr. Orłowski's opinion are unreliable  
 14 and/or beyond his expertise and that his testimony must therefore be excluded.

## 15 **II. Legal Standard**

16 Under Federal Rule of Evidence 702, an expert may testify on the basis of  
 17 "scientific, technical, or other specialized knowledge" if it "will assist the trier of fact to  
 18 understand the evidence," provided the testimony rests on "sufficient facts or data" and  
 19 "reliable principles and methods," and "the witness has reliably applied the principles and  
 20 methods to the facts of the case." Fed. R. Evid. 702(a)–(d). The trial judge acts as the  
 21 "gatekeeper" of expert witness testimony by engaging in a two-part analysis. *Daubert v.*  
 22 *Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589, 592 (1993). First, the trial judge must  
 23 determine that the proposed expert witness testimony is based on scientific, technical, or  
 24 other specialized knowledge. *Id.*; *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147  
 25 (1999). Second, the trial court must ensure that the proposed testimony is relevant—that it  
 26 "will assist the trier of fact to understand or determine a fact in issue." *Id.* "Evidence is  
 27 relevant if it has any tendency to make a fact more or less probable than it would be without  
 28 the evidence and the fact is of consequence in determining the action." Fed. R. Evid. 401.

1 “The inquiry envisioned by Rule 702” is “a flexible one.” *Daubert*, 509 U.S. at 594.  
2 “The focus . . . must be solely on principles and methodology, not on the conclusions that  
3 they generate.” *Id.* The advisory committee notes on the 2000 amendments to Rule 702  
4 explain that Rule 702 (as amended in response to *Daubert*) “is not intended to provide an  
5 excuse for an automatic challenge to the testimony of every expert.” *See Kumho Tire*, 526  
6 U.S. at 152. “Vigorous cross-examination, presentation of contrary evidence, and careful  
7 instruction on the burden of proof are the traditional and appropriate means of attacking  
8 shaky but admissible evidence.” *Daubert*, 509 U.S. at 595 (citation omitted).

### 9 **III. Discussion**

10 Defendants separate their motion into two sections, one attacking Dr. Orlowski’s  
11 “economic opinion” and the other attacking his loss-of-companionship opinion. This is  
12 somewhat of a false dichotomy, as Dr. Orlowski presents loss of companionship as a form  
13 of economic damages. (*See* Doc. 136-1 at 17.) Nevertheless, the Court adopts Defendants’  
14 organizational structure and assesses each of Defendants’ arguments in turn, beginning  
15 with their argument that Dr. Orlowski’s economic opinions are unreliable.

#### 16 **A. Dr. Orlowski’s Economic Opinions**

17 Defendants’ core contention is that Dr. Orlowski’s economic testimony is unreliable  
18 because he estimated Mr. Jauregui’s future income based entirely upon Plaintiff’s  
19 unverified and unverifiable verbal description of her late husband’s past income. The Court  
20 agrees with respect to Dr. Orlowski’s opinion regarding loss of earning capacity but  
21 disagrees with respect to his opinions regarding loss of social security benefits and loss of  
22 household services.

##### 23 **1. Dr. Orlowski’s Opinion Regarding Loss of Earning Capacity**

24 Dr. Orlowski employed an exceptionally uncomplicated methodology to arrive at  
25 an estimate of Mr. Jauregui’s lost earning capacity. In brief, Dr. Orlowski took  
26 Mr. Jauregui’s income from the approximately four and a half months of 2022 during  
27 which he was alive and extrapolated it forward to retirement. (Doc. 136-1 at 2, 8, Attachs.  
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1 A–B.) Dr. Orlowski neither discussed nor applied any income adjustments of any kind,  
2 such as promotions, demotions, raises, pay cuts, business fluctuations, etc.

3 Plaintiff has failed to establish by a preponderance of the evidence that  
4 Dr. Orlowski’s calculation of Mr. Jauregui’s lost earning capacity is the product of reliable  
5 principles and methods. To begin with, Dr. Orlowski does not explain why he estimated  
6 Mr. Jauregui’s lifetime earning potential based solely upon his income from the roughly  
7 four and a half months preceding his death. The arbitrariness of that methodology becomes  
8 clear if one imagines that Mr. Jauregui had died in, for instance, mid-February instead of  
9 mid-May. It would surely be methodologically unsound to estimate a person’s lifetime  
10 earning capacity based upon a few weeks of income, as opposed to some other benchmark,  
11 such as the income generated in the rolling year preceding the person’s death. The  
12 unreliability of Dr. Orlowski’s methodology is especially clear when one considers  
13 Mr. Jauregui’s sources of income beyond his base salary. Despite extrapolating forward  
14 Mr. Jauregui’s income from overtime pay, unused paid time off (PTO), and unused sick  
15 leave, (*see* Motion at 9), Dr. Orlowski offers no explanation of any kind as to how a  
16 four-and-a-half-month sample constitutes an adequate proxy for Mr. Jauregui’s working  
17 habits generally. Defendants question why Dr. Orlowski assumed that Mr. Jauregui would  
18 continue to receive overtime routes at the same rate he did in the first four and a half months  
19 of 2022, as well as why Dr. Orlowski assumed that Mr. Jauregui would continue to use  
20 PTO and sick leave at the same rate as in the first four and a half months of 2022. (*See*  
21 Motion at 9; Reply at 7.) These issues are not discussed in Dr. Orlowski’s report, but he  
22 later clarified in a deposition that his conclusions are based entirely upon informal google  
23 searches that he could not describe with any particularity and upon Plaintiff’s mere say-so.  
24 (*See* Doc. 172-5 at 99–125.) That explanation is insufficient.

25 Of course, it *might* be perfectly appropriate to utilize only a few months’ data in  
26 generating an estimate of lifetime earning capacity; the Court is in no position to  
27 definitively say that such an approach is illegitimate. But, absent some explanation of his  
28 report’s basis and reasoning, the Court cannot hold that Dr. Orlowski’s use of a truncated

1 dataset is scientifically defensible. The Court therefore agrees with Defendants that  
2 Dr. Orlowski's reliance on less than five months of data is, absent a justification,  
3 unreliable. (*See* Motion at 8.)

4 The foregoing analysis goes to the absence of reliability, but there are similar  
5 problems with Dr. Orlowski's report that give rise to the presence of affirmative  
6 unreliability. As noted, in extrapolating forward Mr. Jauregui's income from the portion of  
7 2022 during which he was alive, Dr. Orlowski included in the multiplication operation  
8 certain compensation that Mr. Jauregui had received for unused PTO and sick leave.  
9 However, Dr. Orlowski may have erred in including such unused PTO and sick leave in  
10 his income annualization calculation. (*See* Motion at 9.) If unused PTO and sick leave are  
11 paid out in a lump sum at the end of each calendar year, then Mr. Jauregui's income for the  
12 fraction of 2022 during which he was alive would already reflect an entire year's worth of  
13 compensated PTO and sick leave, and it would therefore be necessary to omit such income  
14 from the annualization function, lest it be double- or triple-counted. Dr. Orlowski  
15 acknowledges that he has essentially no idea how Shamrock Farms administers PTO and  
16 sick leave. (*See* Doc. 172-5 at 116–25 (“**Q.** What -- what do you have to show that that  
17 PTO and sick time payout was from 2022 and not rolled over from previous years; do you  
18 know? **A.** I do not know.”).) Dr. Orlowski admitted to basing his suppositions regarding  
19 overtime, PTO, and sick leave, none of which are mentioned in his report, upon an informal  
20 internet search and verbal statements made by Plaintiff, both of which are also not  
21 described in his report. (*See* Doc. 172-5 at 116–25.) Dr. Orlowski's estimation of lost  
22 earning capacity is therefore unreliable. Plaintiff has not carried her burden of establishing  
23 by a preponderance of the evidence that Dr. Orlowski's expert opinion is the product of  
24 reliable methods applies to appropriate data.

25 Plaintiff's response is unpersuasive. Despite Defendants' full-page discussion of the  
26 flaws in Dr. Orlowski's methodology regarding PTO and sick leave, (*see* Motion at 9),  
27 Plaintiff declines to address the issue and instead inaccurately states that the parties' sole  
28 dispute on this subject concerns overtime pay, (*see* Response at 6). That omission alone is

1 fatal to Plaintiff's argument. But even if Plaintiff were correct that Dr. Orlowski's treatment  
 2 of overtime pay presented the sole reliability issue, Plaintiff's defense of Dr. Orlowski's  
 3 extrapolation thereof is still unavailing. Rather than explain how Dr. Orlowski determined  
 4 that a four-and-a-half-month period was a suitable basis for a projection of lifetime  
 5 earnings, Plaintiff simply asserts that it is. Plaintiff quotes a statement from Dr. Orlowski's  
 6 rebuttal report that "[i]f Mr. Jauregui was needed for such overtime prior to his death in  
 7 January [sic], 2022, and that on the heels of Covid, then it is vocationally probable that this  
 8 trend would have continued long-term," (Response at 6), but that statement is completely  
 9 unsupported by any facts, citations, data, or reasoning, (*see* Doc. 161-4 at 2.) An expert's  
 10 unreliable conclusion is not made reliable simply by paraphrasing it. The Court expresses  
 11 no opinion as to whether Dr. Orlowski's conclusions are correct or incorrect, but the Court  
 12 must exclude expert testimony where, as here, such testimony is not reliable.

## 13 **2. Dr. Orlowski's Opinion Regarding Loss of Social Security** 14 **Benefits**

15 Defendants challenge Dr. Orlowski's valuation of Plaintiff's lost social security  
 16 benefits on narrower grounds. Plaintiff's loss of social security benefits results from her  
 17 not being able to receive her own benefits, given that she will now receive her late  
 18 husband's higher benefits under the relevant social security regulations. Whereas, if  
 19 Mr. Jauregui were still alive, he would receive his benefits and Plaintiff would receive her  
 20 own benefits, thereby permitting the marital estate to receive both benefits. (*See* Doc. 136-  
 21 1 at 10–11.) However, had Mr. Jauregui survived, Plaintiff would have needed to return to  
 22 the workforce for approximately three years in order to become eligible for her own  
 23 benefits. (*See* Doc. 172-5 at 133–36.) Although he declined to discuss any of this in his  
 24 report, Dr. Orlowski later clarified via deposition testimony that his determination of  
 25 Plaintiff's benefits eligibility was based on her verbal statement to him that she intended  
 26 to return to the workforce upon her children's leaving the nest. (*See* Doc. 172-5 at 134.)  
 27 Defendants argue that Dr. Orlowski's opinion is unreliable because he did not mention  
 28

1 Plaintiff's statement in his report and because he has since destroyed his notes of his verbal  
2 conversation with Plaintiff. The Court disagrees.

3 Although Dr. Orlowski omitted from his report Plaintiff's intention to return to the  
4 workforce, he did state that his opinions were based upon his conversation with Plaintiff.  
5 (See Doc. 136-1 at 1.) Indeed, Defendants are well aware that the majority of  
6 Dr. Orlowski's report is based upon Plaintiff's verbal statements, as Defendants repeatedly  
7 use that fact as a cudgel in their critique of other portions of Dr. Orlowski's opinion. The  
8 Court is receptive to Defendants' general contention that an expert must disclose the basis  
9 upon which his opinion rests, but Defendants' position in the instant case elevates form  
10 over function. The basis of Dr. Orlowski's opinion is clear, even if the text of his report  
11 requires its reader to look between the lines. Any opacity that exists as a result of  
12 Dr. Orlowski's omission is *de minimis* and has been ameliorated by his clarification that  
13 he relied on Plaintiff's statement that she intended to return to the workforce. Although  
14 Plaintiff's verbal statements are not a reliable basis upon which to draw conclusions  
15 relating to her late husband's employer's policies concerning overtime, PTO, and sick  
16 leave, Plaintiff's verbal statement is a reliable basis upon which to formulate an opinion  
17 about her own subjective intent to reenter the workforce. Indeed, Defendants do not  
18 indicate what other source of information Dr. Orlowski could possibly have relied upon in  
19 concluding that Plaintiff intended to resume working in the future. The Court therefore  
20 finds Dr. Orlowski's opinion reliable insofar as it pertains to Plaintiff's lost social security  
21 benefits.

22 The fact that Dr. Orlowski has disposed of his notes does not alter that conclusion.  
23 Defendants state that "[w]ithout the notes, cross-examination or counter-presentation of  
24 other evidence is severely hampered." (Reply at 4.) That is simply not true. Defendants can  
25 test Plaintiff's professed intent to return to the workforce during cross-examination.  
26 Dr. Orlowski may therefore testify as to Plaintiff's loss of social security benefits.

27 ...

28 ...



1                   **3. Dr. Orlowski's Opinion Regarding Loss of Household Services**

2           Defendants do not challenge the admissibility of this portion of Dr. Orlowski's  
3 report. Dr. Orlowski may therefore testify thereto.

4                   **B. Dr. Orlowski's Opinion Regarding Loss of Companionship**

5           Despite not providing a monetary valuation of Plaintiff's loss of companionship,  
6 Dr. Orlowski still describes this category of Plaintiff's damages in his expert report.  
7 Dr. Orlowski first defines companionship, based upon certain scholarly publications, as  
8 "simply [] the presence of another person during one's daily activities." (Doc. 136-1 at 13.)  
9 He then dedicates three pages to recounting Plaintiff's statement about the nature of her  
10 and Mr. Jauregui's relationship. Next, he quotes the Supreme Court of New Jersey for the  
11 proposition that loss of companionship is a form of economic harm that is distinct from  
12 loss of consortium. "It must be the kind of advice, guidance and counsel that could be  
13 purchased from a business advisor, a therapist, or a trained counselor, for instance. That  
14 some of us obtain the same benefit without change [sic] from spouses, friends, or child  
15 [sic] does not strip it of pecuniary value." (Doc. 136 at 16 (quoting *Green v. Bittner*, 85  
16 N.J. 1, 14 (1980)).) In his own words, Dr. Orlowski then explains that "[c]ompanionship  
17 is distinguished from consortium in that people are able to hire paid 'companions' through  
18 a personal companion registry. These individuals accompany a person while shopping, help  
19 provide transportation, or generally talking [sic] and interact in helpful ways." (Doc. 136-1  
20 at 16.) Finally, although he expressly declines to "place an actual value on this loss area,"  
21 Dr. Orlowski does note that "[t]hese services are routinely provided through licensed  
22 agencies in greater Phoenix, and cost approximately \$25 to \$30 per hour, depending on the  
23 duration of the scheduled visit." (Doc. 136-1 at 17.)

24           Defendants first argue that Dr. Orlowski is unqualified to opine on the value of lost  
25 companionship because "his specialty is vocational rehabilitation, not relationship  
26 counseling." (*See* Motion at 4.) Defendants appear to not fully apprehend the substance of  
27 Dr. Orlowski's expert opinion. Contrary to Defendants' assertions, Dr. Orlowski's report  
28 does not provide "relationship counseling" or attempt to "assess[] personal relationships,"



1 and he does not purport to possess the expertise necessary to value the intangible,  
2 non-economic components of a relationship. In fact, the opposite is true. His report makes  
3 clear that loss of companionship is an economic harm that can be quantified based upon  
4 reference to the geographically relevant market for paid companions. That numerical  
5 assessment falls within Dr. Orlowski's expertise.

6 Defendants next argue that Dr. Orlowski's opinion is unreliable because it  
7 constitutes a mere trojan horse for Plaintiff's unsworn statements about her relationship.  
8 According to Defendants, "[a]t bottom, Dr. Orlowski's 'method' is just *ipse dixit* from  
9 someone else's mouth: Mr. Jauregui provided intangible things to others because Plaintiff  
10 says he did." (Motion at 6; *see also* Motion at 6 ("Dr. Orlowski is really just parroting  
11 unsworn statements of Plaintiff").) The Court rejects this argument for two reasons. First,  
12 Defendants' contention that Dr. Orlowski's report belies a coherent methodology  
13 overlooks the fact that Dr. Orlowski openly declares that he is not attempting to value  
14 Plaintiff's loss of companionship. His recitation of Plaintiff's statement is *not* presented as  
15 a basis of valuation, but is instead presented as background information to assist in the  
16 explanation of what loss of companionship consists of. Dr. Orlowski's report explains that  
17 loss of companionship must be valued according to a comparative assessment involving  
18 the economic market for companionship, not on the intangible grounds that underlie loss  
19 of consortium. Thus, Dr. Orlowski is not parroting Plaintiff in the manner that Defendants  
20 assert. Second, even if Dr. Orlowski were to ground his opinion in Plaintiff's description  
21 of her relationship with her late husband in the manner described by Defendants, the Court  
22 would not perceive a reliability issue therewith. Notably, Defendants posit no alternative  
23 source of data from which an expert could glean the day-to-day details of marital  
24 companionship. Defendants contend that "Plaintiff, however, may testify at trial—under  
25 oath and with the benefit of cross-examination." (Motion at 6.) True as that statement may  
26 be, it does not follow therefrom that an expert is disallowed from relying upon a widow's  
27 description of the companionship that she has lost.

28 . . .

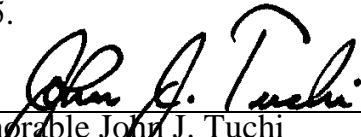
Thus, the Court concludes that Dr. Orlowski's expert opinion, such as it is, is reliable. But, although Dr. Orlowski's quotation of Plaintiff's description of her relationship with Mr. Jauregui is not impermissible, it is of limited utility, given that it does not form the basis of any ultimate conclusion. Nevertheless, the Court finds that Dr. Orlowski's opinion is helpful enough to pass muster. Insofar as loss of companionship is a distinct form of damages, his report is likely to assist the jury in understanding what loss of companionship is and what it is not. Additionally, the Court finds that the jury will benefit from a description of the market for paid companions, particularly as it exists in Phoenix. However, the Court will exclude all discussion of New Jersey caselaw. If either party wants to argue that loss of companionship is or is not recognized as a source of economic damages under Arizona law, they may do so in a timely motion, not in an expert report discussing a single, extra-jurisdictional opinion from forty-five years ago. Any mention of another state's law will likely confuse the jury far more than educate it. Thus, with the exception of his construction of New Jersey caselaw, Dr. Orlowski may testify as to Plaintiff's loss of companionship.

#### **IV. Conclusion**

Dr. Orlowski may present expert testimony regarding Plaintiff's loss of social security benefits, loss of household services, and loss of companionship, as described above. However, the Court finds Dr. Orlowski's opinion to be unreliable insofar as it concerns loss of earning capacity. The Court therefore excludes that portion of Dr. Orlowski's expert testimony.

**IT IS THEREFORE ORDERED** granting in part and denying in part Paccar's motion to exclude the expert testimony of Dr. David Orlowski (Doc. 136).

Dated this 25th day of March, 2025.

  
 Honorable John J. Tuchi  
 United States District Judge